

DOYLE MILLING COMPANY, INC.

IBLA 71-271

72-215

Decided June 19, 1972

Appeals from decisions by which the district manager, Coos Bay district office, Bureau of Land Management, denied applications for a one-year extension on timber sale contracts.

Affirmed.

Timber Sales and Disposals

A request for extension of a timber sale contract is properly denied where the purchaser has not shown that its delay in cutting and removal was due to causes beyond its control.

APPEARANCES: McKeown, Newhouse & Johansen, attorneys for appellant.

OPINION BY MR. HENRIQUES

These are appeals from decisions of the district manager, Bureau of Land Management, Coos Bay, Oregon, dated April 9, 1971, and October 15, 1971, denying applications for a one-year extension on timber sale contracts 14-11-0008(8)312 and 14-11-0008(8)313, for the reason that no new or additional information had been submitted which could support a reconsideration of a previous decision dated September 18, 1970, denying such requests for extension.

Contract 313 authorized appellant to remove an estimated 3,490 M bd. ft. from lands in section 13, T. 28 S., R. 12 W., W.M., Coos County, Oregon, for a price of \$322,514.80. This contract was executed on behalf of the United States on April 16, 1969, and was to expire 30 months later, on October 15, 1971. Contract 312 authorized the removal of 2,347 M bd. ft. from section 24, T. 26 S., R. 10 W., W.M., Coos County, Oregon, for a price of \$327,104.00. This contract was executed on April 17, 1969, and was to expire 24 months later on April 15, 1971.

On September 3, 1970, the appellant requested an extension for not less than 12 months on each contract, citing as its reason the general economic conditions nationally and more specifically the condition of the lumber market. The district manager, by decision dated September 18, 1970, denied the applications, holding in each case that no sufficient reason for delay in operating under the contract had been shown and that inability to perform because of the reason stated cannot be regarded as sufficient cause to merit an extension under section 9 of the contract.

On March 24, 1971, as to contract 312, and on October 15, 1971, as to contract 313, the appellant filed new applications for a one-year extension, each stating that the reason "was due to causes beyond the control of the purchaser and without its fault or negligence." The district manager, by decisions of April 9 and October 15, 1971, respectively, denied the requests, stating that no new information had been furnished to support a reconsideration of the earlier requests, and reiterating that market fluctuations are not cause for favorable consideration of requests for contract extensions.

In its statement of reasons for these appeals, the appellant contends that the delay in cutting and removal of the timber was due to causes beyond its control and without its fault or negligence, adverting again to the deterioration in the national economic picture as it relates to the lumber industry. The appellant, however, has not shown any cogent reason for its failure to comply with the contracts.

It is well established that a business depression is no excuse within the "beyond control" exceptions contained in the exculpatory clause of a contract. See Nordic Veneers, Inc., 3 IBLA 86 (1971); Marionneaux v. Smith, 163 S. 206 (La. App. 1935); Western Alfalfa Milling Co. v. Worthington, 223 P. 218 (Sup. Ct. Wyo. 1924). Thus it has not been shown that the delay in cutting and removing the timber was due to acceptable causes beyond control of Doyle, within the ambit of the contract terms, expressed in section 9 thereof:

Extension of Time and Reappraisal. If the Purchaser shows that his delay in cutting and removal was due to causes beyond his control and without his fault or negligence, the Authorized Officer may grant an extension of time, not to

exceed one year upon written request of the Purchaser. Market fluctuations are not cause for consideration of contract extensions \* \* \*. 43 CFR 5463.2 (1971).

The appellant likewise has not shown any substantive reason for exercise of the Secretary's discretionary authority contrary to the Department's policy of adhering strictly to the terms of the timber sales contracts, nor have we found any such reason. See Nordic Veneers, Inc., supra.

In view of our conclusions no useful purpose would be served by granting the request of the appellant for a hearing or for an oral argument. Accordingly, these requests are denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decisions appealed from are affirmed.

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Douglas E. Henriques, Member

We concur:

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Newton Frishberg, Chairman

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Joan B. Thompson, Member

